No. 94-2096

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In The

Supreme Court of the United States

October Term, 1995

ARTHUR SCHREIBER,

Petitioner,

vs.

UNITED STATES OF AMERICA, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

Respondent,

-and-

TOSHIA MUNDY; WILLIAM MAYS; TAMMIE LATHAM,

Intervenors-Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

BRIEF OF INTERVENORS-RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MICHAEL J. MOONEY
Counsel of Record
200 Ropes Building
917 Main Street
Cincinnati, Ohio 45202
(513) 977-4213

JOHN E. SCHRIDER, JR.
ANDREW HOFFMAN
Legal Aid Society of Cincinnati
901 Elm Street
Cincinnati, Ohio 45202
(513) 241-9400

Attorneys for Intervenors-Respondents

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QUESTIONS PRESENTED

Petitioner has presented the following questions:

1) Did the Court of Appeals err as a matter of law in holding that a provision in a Settlement Agreement that defined a Renovation Period was unambiguous when it considered only one component of the definition and ignored the second conflicting component of the definition?

2) Did the Court of Appeals err as a matter of law in holding the admitting of irrelevant evidence concerning the physical condition of low income rental projects is harmless error, when the reason for this holding is based upon information derived from the improperly admitted evidence?

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Intervenors-Respondents, Toshia Mundy, et al., respectfully request that this Court deny the petition for a Writ of Certiorari for review of the judgment and opinion of the United States Court of Appeals for the Sixth Circuit, entered on March 14, 1995.

STATEMENT OF THE CASE

Intervenors-Respondents, low-income residents of the housing that is the subject of this litigation, do not disagree with Petitioner's presentation of the facts of this case, except they disagree with Petitioner's conclusory statement (Brief of Petitioner, p. 6) that there was an ambiguity in the Settlement Agreement. As the Sixth Circuit properly found:

> The underlying issue there is . . . whether there was a Renovation Period of six months running from February 1, 1991 after which Mr. Schreiber would be obligated to provide funds if requested by the managing agency. The Court's view is that the District Court did not err in it's [sic] conclusion. There was a discreet and discernable Renovation Period of six months running from February 1, 1991. The Settlement Period recited that the Renovation Period duration would begin on February 1, 1991 – the commencement of the Management Period. Contrary to the defendant's reading of Section 12(b), however, the Settlement Agreement does not seem to establish a mere goal of finishing the renovations in six months. The section begins with the language, "by no later than six months from the commencement of the management period" – hardly the language of aspiration – and the section concludes by naming the period the Renovation Period. And in the Management Agreement between Mr. Schreiber and Model it was specifically declared that the Renovation Period would last six months starting February 1, 1991. That is consistent with the lawsuit Settlement Agreement definition.

Opinion of the Court, pp. A-3 - A-4 of the Appendix to Petition.

ARGUMENT

The considerations governing review by the Supreme Court of the United States on a petition for writ of certiorari are set forth in Rule 10 of the Rules of the Supreme Court of the United States. Neither of the issues presented for review by Petitioner meet the criteria contained in Rule 10. Thus, there is no reason for the Court to review this case.

Rule 10 of the Supreme Court of the United States provides:

> "A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor."

One principal purpose of the Court's certiorari jurisdiction is to resolve conflicts among Circuit Courts of Appeal and state courts in issues of federal law. *Braxton v. U.S.*, 500 U.S. 344, 111 S.Ct. 1854, 114 L.Ed.2d 385 (1991). In those situations in which a United States Court of Appeals has departed from the usual and accepted course of judicial proceedings, certiorari may also be granted. Rule 10 of the Supreme Court of the United States.

Here, Petitioner presents one issue of contract interpretation and one evidentiary issue. Petitioner states as his reason for seeking review by this Court the fact that he feels that he did not receive a fair hearing below, and

that he is facing financial difficulties as a result of the decisions below. Both of Petitioner's issues were presented to the Sixth Circuit Court of Appeals, fully briefed, and presented at oral argument. The Sixth Circuit ruled against Petitioner, from the bench, on both issues.

Petitioner acknowledges, at p. 9 of his petition, that "[t]his case is not a case of great national importance, nor one that raises serious constitutional issues." It is equally apparent that this case does not present a conflict between Circuit Courts of Appeals, nor is it a case in which the Sixth Circuit departed from the accepted and usual course of judicial proceedings.

In his first reason stated for granting a writ of certiorari, Petitioner contends that the Courts below misinterpreted the Settlement Agreement. This issue was fully presented at trial, and the trial court found Petitioner's position to be without merit. The issue was then fully briefed and argued to the Sixth Circuit. The Sixth Circuit likewise found Petitioner's position to be without merit. Petitioner has presented no arguments in this petition that were not included in his case below. The ruling below does not constitute a departure from standard judicial procedure, and therefore the Court should not hear this appeal.

Regarding Petitioner's claim of an erroneous evidentiary ruling, the Sixth Circuit reviewed the trial court's admission of the disputed evidence and found that the trial court had not abused its discretion. The Sixth Circuit did not hold that the exhibits in question were "completely irrelevant," as Petitioner suggests. *See* Petition For Writ Of Certiorari, page 7. The Sixth Circuit simply held

that the trial court did not abuse its discretion in admitting the exhibits as relevant under Federal Rule of Evidence 401 for background information, or, in the alternative, that if the exhibits were not relevant, their admission was harmless error. *See* Petition For Writ Of Certiorari, page A-5 of the Appendix.

CONCLUSION

Petitioner has identified no basis for the Court to grant his Petition For A Writ Of Certiorari pursuant to Rule 10 of the Supreme Court of the United States. Although he feels that the trial court reached the wrong conclusion, and that the Sixth Circuit Court of Appeals reached the wrong conclusion on appeal, this does not qualify his case for review by the Supreme Court of the United States. Petitioner's reasons for seeking review do not meet the criteria set forth in Rule 10, and for that reason this Court should deny the petition.

Respectfully submitted,

MICHAEL J. MOONEY
Counsel of Record
200 Ropes Building
917 Main Street
Cincinnati, Ohio 45202
(513) 977-4213

JOHN E. SCHRIDER, JR.
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